



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
<http://www.epa.gov/region08>

Ref: 8ENF-T

JUN 17 2002

BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. David Sogard  
Vice President  
Legal & Governmental Affairs  
Minnkota Power Cooperative, Inc.  
1822 Mill Road  
Grand Forks, North Dakota 58208-3200

Re: Notice of Violation of Clean Air Act Part C, Prevention of  
Significant Deterioration ("PSD") Issued Pursuant to §113  
of the Clean Air Act to Minnkota Power Cooperative for  
the Milton R. Young Station  
Docket No.: CAA-08-2002-03

Dear Mr. Sogard:

We have reviewed your letter of April 12, 2002, to Ron Rutherford of my staff regarding emissions calculations for the Milton R. Young Station. In your cover letter you indicate that these calculations show that pre-project actual emissions and post-project actual emissions do not result in a significant net emission increase. However, in your letter and attachments, you do not provide, as is required by the New Source Review ("NSR") program, an analysis of net significant emission increase based on the difference between pre-project "actual emissions" and post-project "representative actual annual emissions", as these terms are defined at 40 C.F.R. Part 52.21(b)(21) and (33), respectively.

The WEPCO rule (57 FR 32314, July 21, 1992) requires that the source compare projected representative future emissions to past actual emissions (an "actual to projected future actual" test) for evaluating nonexempt modifications. Where the projection is that net emissions will increase by more than the significance level, NSR is triggered. However, where the projection is that net emissions will not increase by more than the significance level, major NSR requirements are not triggered. In such instances, the rule requires that documentation of the validity of the source's projection be furnished by submitting actual emission data annually for five years following the change. Minnkota has not provided any evidence that any such emissions data was to be, or indeed was, submitted to EPA or North Dakota for either of the projects identified.



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Based on our review of Minnkota's emissions related information provided to EPA in response to our request for information dated September 29, 2000, pursuant to CAA §114, and the information submitted in the April 12, 2002 letter, which addresses only actual to actual emissions data, we find that each of the two projects identified in our letter to John Graves, dated October 18, 2001, did result in significant net emissions increases for both SO<sub>2</sub> and NO<sub>x</sub> and were not offset by the installation or upgrade of pollution control equipment or other emission reduction strategies available to Minnkota prior to the performance of these projects.

As a result of our findings, enclosed is a Notice of Violation ("NOV") issued pursuant to § 113 (a)(1) of the Clean Air Act, 42 U.S.C. §7413(a)(1), to Minnkota Power Cooperative for violations of PSD at the Milton R. Young Station Unit 1 and Unit 2. Please refer to the enclosed NOV for your opportunity to meet with EPA regarding these violations.

Sincerely,



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: David Glatt, Director  
North Dakota Dept of Natural Resources

Bruce Buckheit, Director  
EPA Air Enforcement Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8

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IN THE MATTER OF:

Minnkota Power Cooperative

Milton R. Young Station (Oliver  
County), North Dakota

Proceedings Pursuant to  
Section 113(a)(1) of the  
Clean Air Act, 42 U.S.C.  
§7413(a)(1)

Notice of Violation

DOCKET NO.: CAA-08-2002-03

FILED  
EPA REGION VIII  
HEARING CLERK

**NOTICE OF VIOLATION**

This Notice of Violation ("NOV") is issued to the Minnkota Power Cooperative ("Minnkota") for violations of the Clean Air Act ("Act") at its Milton R. Young ("M.R. Young Station") lignite-fired power plant in North Dakota. Minnkota has embarked on a program of modifications intended to extend the useful life, regain lost generating capacity, and increase capacity at M.R. Young Station.

Commencing at various times since at least 1994 and continuing to today, Minnkota has modified and operated M.R. Young station without obtaining a New Source Review ("NSR") Prevention of Significant Deterioration ("PSD") permit authorizing the construction and operation of physical modifications of its boiler units as required by the Act. In addition, for each physical modification at this power plant, Minnkota has operated these modifications without installing pollution control equipment required by the Act. These violations of the Act and the State Implementation Plan ("SIP") of North Dakota have resulted in the release of massive amounts of Sulfur Dioxides ("SO<sub>2</sub>") Nitrogen Oxides ("NO<sub>x</sub>") and/or particulate matter ("PM") into the environment. Until these violations are corrected, Minnkota will continue to release massive amounts of illegal SO<sub>2</sub> and NO<sub>x</sub> into the environment.

This NOV is issued pursuant to §113(a)(1) of the Act, as amended, 42 U.S.C. §§7401-7671q. §113(a) of the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan or permit of the violations. The authority to issue this NOV has been delegated to the Regional Administrator for EPA Region 8 and further re-delegated to the Assistant Regional Administrator for the Office of Enforcement, Compliance and Environmental Justice.

## STATUTORY AND REGULATORY BACKGROUND

1. When the Clean Air Act was passed in 1970, Congress exempted existing facilities from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in Alabama Power v. Costle, 636 F.2d 323 (D.C. Cir. 1979), "the statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its projected representative actual annual emissions may increase.
2. The NSR provisions of Parts C and D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a PSD permit or a nonattainment NSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. To obtain the required permit, the source must agree to install the Best Available Control Technology ("BACT") for an attainment pollutant or achieve the Lowest Achievable Emission Rate ("LAER") in a nonattainment area. Sources may not operate unless they meet the emission limits that would have been imposed by the permitting process.
3. Pursuant to Part C of the Act, the North Dakota SIP requires that no construction or operation of a major modification of a major stationary source occur in an area designated as attainment without first obtaining a permit under 42 U.S.C. §§7470-7492, 40 CFR §52.21 and the current North Dakota SIP, and prohibits the operation of a major stationary source after a major modification unless the source has applied BACT pursuant to 40 CFR §52.21(j) and the North Dakota SIP. The PSD portion of the North Dakota SIP was originally approved by EPA on November 2, 1979 (44 Fed. Reg. 63102). EPA approved subsequent revisions to the North Dakota SIP-approved PSD regulations on: 9/18/84 (49 Fed. Reg. 36501), 5/12/89 (54 Fed. Reg. 20574), 8/9/90 (55 Fed. Reg. 32403), 3/28/91 (56 Fed. Reg. 12848), 6/26/92 ( 57 Fed. Reg. 28619), 8/21/95 ( 60 Fed. Reg. 43396), 11/3/95 (60 Fed. Reg. 55792).
4. The SIP provisions identified in paragraph 3 above are federally enforceable pursuant to §§ 110 and 113 of the Act.

## FACTUAL BACKGROUND

5. Minnkota operates the M.R. Young Station, a lignite-fired electric utility steam generating plant located in Oliver County, Center City, North Dakota. The plant consists of two boiler units, Unit 1 with a total generating capacity of 235 megawatts began operation in 1970, and Unit 2 with a total generating capacity of 455 megawatts began operation in 1977.
6. The M.R. Young Station is located in an area that has the following attainment/nonattainment classifications:

For NO<sub>2</sub>, the area has been classified as attainment from 1978 to the present.

For SO<sub>2</sub>, the area has been classified as attainment from 1978 to the present.

For total particulate matter, the area has been classified as attainment since 1978.

For PM<sub>10</sub>, the area has been classified as attainment since 11/15/90.

For ozone, the area has been classified as attainment since 9/11/78.

7. The plant identified in paragraph 5 above emits or has the potential to emit at least 100 tons per year of NO<sub>x</sub>, SO<sub>2</sub> and particulate matter and is a major stationary source under the Act.

## VIOLATIONS

8. Minnkota has made "major modifications" of the M.R. Young Station as defined by both 40 CFR §52.21 and North Dakota SIP Rules NDAC 33-15-15-01. The modifications include but are not limited to the following physical or operational changes, alone or in combination: replacement of a secondary superheater and partial replacement of a reheat superheater on Unit 1 in 1997, and installation of a new secondary superheater, a reheater and a top bank primary superheater on Unit 2 in 1995.
9. Each of these modifications resulted in a net significant increase in emissions for NO<sub>x</sub>, SO<sub>2</sub>, and/or PM as defined by 40 CFR §§52.21(b)(3) and (23) and North Dakota SIP Rule NDAC 33-15-15-01.1.aa and hh.
10. For each of the modifications that occurred at the M.R. Young Station, Minnkota did not obtain a PSD permit pursuant to 40 CFR §52.21 and North Dakota SIP Rule NDAC 33-15-15-01. In addition, for modifications after 1992, no information was provided to the permitting agency on an annual basis for a period of five years following the date the unit resumed regular operation demonstrating that the modification did not result in an emissions increase in accordance with 40 CFR §52.21(b)(21)(v) and Rule NDAC 33-15-15-01.1.a(4).

11. The modifications do not fall within the "routine maintenance, repair and replacement" exemption found at 40 CFR §52.21(b)(2)(iii)(a) and North Dakota SIP Rule NDAC 33-15-15-01.1.x(2)(a). Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to extend the life of the unit, regain lost capacity and/or availability, and/or increase capacity and/or availability. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the Court of Appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).
12. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 CFR §52.21(b)(2)(iii)(f), or North Dakota regulation NDAC 33-15-15-01.1.x(2)(d). This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity.
13. None of these modifications fall within the "demand growth" exemption found at 40 CFR §52.21(b)(33)(ii) and North Dakota SIP Rule NDAC 33-15-15-01.1.ee(2), because for each modification a physical change was performed which resulted in an increase in representative actual annual emissions.
14. Therefore, Minnkota violated and continues to violate 40 CFR §52.21 and North Dakota SIP Rule NDAC 33-15-15-01, regarding the prevention of significant deterioration by constructing and operating modifications at the M.R. Young Station without the necessary permits and by constructing and operating without the application of BACT required by the North Dakota SIP.
15. Each of these violations exists from the date of start of construction of the modification until the time that Minnkota obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the North Dakota SIP.

### ENFORCEMENT

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, and/or bring a civil action pursuant to §113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation on or before January 30, 1997, and no more than \$27,500 per day for each violation after January 30, 1997.

**OPPORTUNITY FOR CONFERENCE**

Respondent may, upon request, confer with EPA. The conference will enable Respondent to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

David Rochlin  
Enforcement Attorney  
Office of Enforcement, Compliance  
& Environmental Justice  
U.S. EPA Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202  
303-312-6892

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

**EFFECTIVE DATE**

This NOV shall be effective immediately upon issuance.

Date Issued: June 17, 2002.



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
& Environmental Justice  
U.S. EPA, Region 8